

1 BRENT M. RESH  
(Nev. Bar No. 14940)  
2 BRENT RESH LAW, PLLC  
2401 La Solana Way  
3 Las Vegas, NV 89102  
(702) 781-6903  
4 brent@brentreshlaw.com

5 JESSICA L. BLOME  
(Cal. Bar No. 314898, pro hac vice)  
6 JENNIFER RAE LOVKO  
(Cal. Bar No. 208855, pro hac vice)  
7 GREENFIRE LAW, PC  
2748 Adeline Street, Suite A  
8 Berkeley, CA 94703  
(510) 900-9502  
9 jblome@greenfirelaw.com  
10 rlovko@greenfirelaw.com

11 *Attorneys for Plaintiffs*

12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA**

14 WILD HORSE EDUCATION, a non-profit  
corporation and LAURA LEIGH,  
15 individually,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF  
INTERIOR, BUREAU OF LAND  
19 MANAGEMENT, and JON RABY, Nevada  
State Director of the Bureau of Land  
20 Management,

21 Defendants.  
22  
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25  
26

CASE NO. 3:23-cv-00372

**PLAINTIFFS' REPLY IN SUPPORT OF  
SECOND MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION [ECF  
NO. 60]**

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1 Plaintiffs seek injunctive relief because the Bureau of Land Management (BLM) has  
2 violated the Wild & Free-Roaming Horses and Burros Act (Wild Horse Act) and National  
3 Environmental Policy Act (NEPA) by relying on the 2017 Antelope and Triple B Complexes  
4 Gather Plan Environmental Assessment (2017 EA) to conduct multiple, phased gathers of  
5 “excess horses” in the Triple B Complex of Herd Management Areas over a ten-year period. Not  
6 only has BLM not adhered to the Wild Horse Act’s immediacy requirement, but the agency also  
7 has removed more horses than analyzed by the 2017 EA without conducting any additional  
8 environmental review. BLM’s decision to adopt a phased gather plan and ignore NEPA’s  
9 requirements is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with  
10 the law or was in excess of statutory jurisdiction, authority, or limitations, or short of statutory  
11 right under the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), (C).

12 The BLM attempts to cloud these issues by referring to conditions in the Triple B  
13 Complex over the past year or two. Dkt. 66, pp.13-14. Essentially, BLM is arguing that it can  
14 rely upon the 2017 EA because the agency *could have shown* that an overpopulation exists, and  
15 action is necessary to protect the rangeland. There can be no doubt that BLM’s approach illegally  
16 sidesteps the Wild Horse Act’s immediacy requirement under Section 1333(b)(2) of the Wild  
17 Horse Act as well as BLM’s separate obligation to comply with NEPA when making such  
18 determinations. *See W. Rangeland Conservation Ass’n v. Zinke*, 265 F. Supp. 3d 1267, 1275 (D.  
19 Utah 2017); *Friends of Animals v. Haugrud* (hereafter *Haugrud*), 236 F. Supp. 3d 131, 132  
20 (D.D.C. 2017). In addition, BLM’s reliance on “evidence” of current conditions improperly  
21 relies on irrelevant, extra-record evidence. And, even if this “evidence” were considered,  
22 Plaintiffs demonstrate that it does not accurately portray conditions in the Triple B Complex.

23 Plaintiffs are likely to win on the merits of their claims, so they are entitled to temporary  
24 injunctive relief to maintain the status quo until the Court can fully vet their claims and BLM’s  
25 defenses. The wildlife subject to BLM’s unlawful removal action are more than physical  
26

property; they are living, breathing beings with responsibilities to their herds and important family relationships. Removing wild horses and burros from the range is a permanent action that BLM has never been forced to reverse, even as Plaintiffs ultimately succeed on the merits of their claims. Absent preliminary injunctive relief, the Court leaves Plaintiffs with the prospect of a Pyrrhic victory. Accordingly, Plaintiffs respectfully request that the Court enjoin BLM from conducting further gather operations in the Antelope and Triple B Complexes pursuant to the 2017 EA until the Court can make a merits determination on the questions presented in Plaintiffs' Complaint.

### **I. PROCEDURAL FRAMEWORK AND APPLICABLE FACTS**

The BLM has numerous mandatory duties that it must fulfill prior to removing wild horses from public lands. Specifically, to remove excess wild horses from public lands, BLM must (1) determine that an overpopulation exists, (2) demonstrate that removal is necessary, *and* (3) engage in NEPA review. *See* 16 U.S.C. § 1333(b)(2); *Friends of Animals v. Pendley* (hereafter *Pendley*), 523 F. Supp. 3d 39, 48 (D.D.C. 2021); *W. Rangeland Conservation Ass'n*, 265 F. Supp. 3d at 1275; *Haugrud*, 236 F. Supp. 3d at 132; *Wyoming*, 839 F.3d at 945. Each step is required – Defendant does not have the discretion to skip any of the steps. *See id.*

To demonstrate the existence of an overpopulation, BLM must show that the current inventory is in excess of the appropriate management level (AML) for a herd management area (HMA). *See* 16 USCS § 1333(b)(1).<sup>1</sup> To demonstrate necessity, BLM must address rangeland conditions based on currently available information. *See* 16 USCS § 1333(b)(2). As interpreted

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<sup>1</sup> AMLs are tailored for individual HMAs and not for a complex in its entirety. *See* Second Leigh Decl., Exh. A (BLM Handbook H-4700-1, p.56) (AML is the “number of adult horses or burros ... to be managed within an HMA”). Here, the Triple B Complex contains 1,632,324 acres and consists of the Triple B HMA, Maverick Medicine HMA, and Antelope Valley West HMA. The Complex also contains the Cherry Springs Wild Horse Territory (WHT), which is managed in accordance with an agreement between BLM and USFS. Dkt. 60-1, pp.8-9. The low AMLs for each are 250 for the Triple B HMA, 166 for the Maverick Medicine HMA, 16 for the Antelope West HMA, and 40 for the Cherry Springs WHT. *Id.*

1 by BLM:

2 In making the determination that excess WH&B [wild horses and  
3 burros] are present and require immediate removal, the authorized  
4 officer will analyze current information including grazing  
5 utilization and distribution, trend in range ecological condition,  
6 actual use, climate (weather) data, current population inventory,  
7 WH&B located outside the HMA in areas not designated for their  
8 long-term maintenance and other factors which demonstrate  
9 removal is needed to restore or maintain the range. Justifying a  
10 removal based on nothing more than the established AML is not  
11 acceptable.

12 Second Leigh Decl., Exh. A, p.47.

13 Before removing excess horses, BLM also must engage in NEPA review. *See Pendley*,  
14 523 F. Supp. 3d at 48 (D.D.C. 2021); *W. Rangeland Conservation Ass'n*, 265 F. Supp. 3d at  
15 1275; *Haugrud*, 236 F. Supp. 3d at 132. Such review may entail preparation of an environmental  
16 assessment or an environmental impact statement. *See* 42 U.S.C. § 4332(2)(C); 40 C.F.R. §  
17 1501.3; 40 C.F.R. § 1501.54.

18 “NEPA imposes on federal agencies a continuing duty to supplement existing EAs and  
19 EISs in response to ‘significant new circumstances or information relevant to environmental  
20 concerns and bearing on the proposed action or its impacts.’” *Idaho Sporting Cong., Inc. v.*  
21 *Alexander*, 222 F.3d 562, 566 n.2 (9th Cir. 2000) (quoting 40 C.F.R. § 1509(c)(1)(ii)). An  
22 agency “must be alert to new information that may alter the results of its original environmental  
23 analysis, and continue to take a ‘hard look at the environmental effects of its planned action,  
24 even after a proposal has received initial approval.’” *Friends of the Clearwater v. Dombeck*, 222  
25 F.3d 552, 557 (9th Cir. 2000) (quoting *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374  
26 (2000)). NEPA also identifies procedures for conducting emergency gathers. *See* 43 C.F.R. §  
46.150. (BLM contends that granting Plaintiffs’ motion may force BLM to conduct emergency  
gathers in the future; however, BLM is not contending that the upcoming November gather is an  
emergency gather.) To allow for emergency gathers, BLM must still document and consider

1 environmental consequences. *See id.* at (a)-(c). This may result, for example, in an EA and a  
 2 finding of no significant impact (FONSI). *See id.* at (c). Where action is required prior to  
 3 completion of an environmental review, BLM “shall consult with the Office of Environmental  
 4 Policy and Compliance about alternative arrangements for NEPA compliance.” *Id.* The required  
 5 action can go no further than what is necessary to control the emergency’s immediate impacts.  
 6 *See id.*; *Friends of Animals v. BLM*, No. 2:16-cv-1670-SI, 2018 U.S. Dist. LEXIS 56104, at \*22  
 7 (D. Or. Apr. 2, 2018).

8 Once a determination has been made that removal of excess horses is necessary and  
 9 NEPA review has been completed, BLM must then act to *immediately* remove the excess horses.  
 10 16 U.S.C. § 1333(b)(2).

11 As to the Antelope and Triple B Complexes of Herd Management Areas, BLM adopted  
 12 the 2017 EA seven years ago to authorize the removal of approximately 3,370 horses from the  
 13 Triple B Complex, with 1,874 to be removed from the Triple B Complex, 1,405 to be removed  
 14 from the Maverick Medicine HMA, 55 to be removed from the Antelope Valley West HMA, and  
 15 36 to be removed from the Cherry Springs WHT. Dkt. 60-1, p.4. To date, BLM has captured and  
 16 permanelty removed approximately 4,500 horses from the Complex. Dkt. 60-2 at ¶¶8-14. With  
 17 its most recent removal announcement, BLM still contends it has a right to rely on the gather  
 18 plan adopted in 2017 to remove another 2,255 from the Complex, but neither the Wild Horse Act  
 19 nor NEPA allow such reliance. Instead, BLM must adopt a proper gather plan that addresses the  
 20 Wild Horse Act’s immediacy requirement and NEPA’s environmental review requirements in a  
 21 document subject to NEPA and BLM’s regulatory public participation procedures. *See* 16 USC §  
 22 1333(b); *Pendley*, 523 F. Supp. 3d at 48 (D.D.C. 2021); *W. Rangeland Conservation Ass'n*, 265  
 23 F. Supp. 3d at 1275; *Haugrud*, 236 F. Supp. 3d at 132.

## 24 **II. ARGUMENT**

### 25 **A. Plaintiffs Object to BLM’s Irrelevant, Extra-Record Evidence**



1 Plaintiffs object to the declarations of Benjamin F. Noyes, Bruce Thompson, Ruth  
2 Thompson, and Joseph Crusham in their entirety (including all associated exhibits and  
3 photographs) as being irrelevant extra-record evidence. *See* Fed. R Evid. 401; *Kunaknana v.*  
4 *Clark*, 742 F.2d 1145, 1149 (9th Cir. 1984). To the extent these declarations address whether  
5 gather operations are being conducted humanely, they are irrelevant because this is not an issue  
6 upon which Plaintiffs are basing their motion. The remainder of the declarations' content focuses  
7 on current range conditions and horse populations in the Triple B Complex. Dkt. 66-1, 66-2, 66-  
8 3, 66-4, 66-5, 66-6. However, this content also is irrelevant because the upcoming November  
9 gather is *not* an emergency gather, and to the extent BLM contends the evidence is pertinent to  
10 the 2017 EA and the Wild Horse Act's immediacy requirement, the content is improper extra-  
11 record evidence. "While the Court can consider extra-record material to explain the agency's  
12 decision, the material cannot be used to form 'a new rationalization of the agency's decision.'" *W.*  
13 *Watersheds Project v. Rosenkrance*, 736 F. Supp. 2d 1276, 1283 (D. Idaho 2010) (quoting  
14 *Kunaknana*, 742 F.2d at 1149). Once the administrative record is completed, it will not contain  
15 documents created *after* issuance of the 2017 EA and produced in response to litigation. *See*  
16 *Kunaknana*, 742 F.2d at 1149. And there can be absolutely no doubt that BLM will fight any  
17 effort Plaintiffs make to add post-decision evidence to the record to support its claims. What's  
18 good for the goose is good for the gander.

19 Moreover, if anything, BLM's ability to quickly compile extra-record evidence in  
20 opposition to Plaintiffs' motion demonstrates that they have evidence in their possession that  
21 could have been used to fulfill NEPA's requirements for a supplemental or new environmental  
22 review. Had the agency chosen to follow the law, such an environmental review would have  
23 provided the public and decisionmakers with information necessary to determine the impacts of  
24 removing thousands of horses from the Complex—a key purpose served by NEPA review. *See*  
25 *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). The BLM cannot  
26

bypass NEPA through new documents and information submitted in opposition papers. *See W. Watersheds Project v. Rosenkrance*, No. 4:09-CV-298-EJL, 2011 U.S. Dist. LEXIS 1288, at \*18-19 (D. Idaho Jan. 5, 2011) (excluding post-hoc extra-record evidence submitted by BLM because such evidence “cannot save a deficient NEPA analysis and circumvent the public's right to comment on the data upon which the agency uses to reach its decision”).

#### **B. Plaintiffs’ Object to Certain Evidence as Misleading Evidence**

Should the Court nonetheless consider BLM’s declarations and supporting documents, Plaintiffs object that the evidence is misleading. *See* Fed. R Evid. 403. As established by the Second Declaration of Laura Leigh, the declarations and supporting documents (including photographs) only depict a small portion of the Complex’s 1,632,324 acres. Second Leigh Decl. at ¶¶19, 21-23, 25. Photographs taken by Ms. Leigh demonstrate that Defendants’ photographs are not indicative of the Triple B Complex in its entirety. *Id.* at ¶26. In addition, most of BLM’s photographs were taken at the Mavericks Medicine HMA, and BLM conducted an emergency gather at this location in August of 2024 to deal with the issues. *Id.* at ¶19. Some photographs also depict the Cherry Springs WHT, but those photographs erroneously conclude water sources are barren due to drought when, in truth, these water sources are nonfunctioning as a result of disrepair and BLM mismanagement. *Id.* at ¶¶21-22.

The BLM acknowledges significant snowpack exists in the Complex, but the agency ignores that this implies any existing drought conditions are near an end. *Id.* at ¶18. And, BLM points to photographs of roughly a dozen horses as evidence that further roundup is called for, but the agency ignores that more than a dozen horses are likely to die as a result of the gather! *Id.* at ¶20. Indeed, Benjamin Noyes admits in his declaration that 1.2 to 2. 7% of horses previously gathered in the Triple B Complex from 2017 to the present have died onsite during gather activities and do not include post-capture numbers. Dkt. 66-1 at ¶¶14-19. Not only is this extra-record evidence regarding *current* conditions irrelevant to whether or not BLM’s 2017 EA

1 legally authorizes the capture and removal of 2,000+ more horses, it is also misleading, as it does  
 2 not support BLM's argument that more than 2,000 horses must be removed in November.

### 3 **C. Plaintiffs Are Likely to Succeed on the Merits**

4 Plaintiffs' complaint alleges that BLM has abused its discretion and violated the Wild  
 5 Horse Act by adopting the 2017 EA, a ten-year, phased gather plan. Dkt. 58, p.21. Defendants  
 6 argue that Plaintiffs' claim must fail because the complaint challenges the 2017 EA and not the  
 7 Decision Record. This argument is absurd. Plaintiffs gave fair notice<sup>2</sup> that they challenge the  
 8 adoption of the 2017 EA, which necessarily occurred through a Decision Record—a Decision  
 9 Record that Plaintiffs attached to their original motion. Dkt. 60-1, pp.17-25. The BLM is not at a  
 10 loss to understand the basis for Plaintiffs' claim. As this Court has previously noted, “[t]he  
 11 Federal Rules of Civil Procedure require only that a complaint include ‘a short and plain  
 12 statement of the claim showing that the pleader is entitled to relief.’” *Leigh v. Raby*, No. 3:22-cv-  
 13 00034-MMD-CLB, 2024 U.S. Dist. LEXIS 57734, at \*9 (D. Nev. Mar. 28, 2024) (quoting Fed.  
 14 R. Civil Proc. 8(a)(2)). “This simplified notice pleading standard relies on liberal discovery rules  
 15 and summary judgment motions to define disputed facts and issues,” rather than requiring  
 16 plaintiffs to define all their claims perfectly before further proceedings are conducted. *Id.* at \*9-  
 17 10 (quoting *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002)). Where a complaint  
 18 provides defendants with “fair notice” of a plaintiff's claims, the complaint satisfies federal  
 19 notice pleading requirements. *Id.* at \*10 (citing *Swierkiewicz*, 534 U.S. at 514; *Updike v.*  
 20 *Multnomah Cnty.*, 870 F.3d 939, 952 (9th Cir. 2017)).

21 As regards the merits of Plaintiffs' claims, BLM argues that the caselaw does not support

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22  
 23 <sup>2</sup> As stated in Plaintiffs' original motion for injunctive relief: “The BLM's decision to adopt a phased  
 24 gather plan was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law  
 25 or was in excess of statutory jurisdiction, authority, or limitations, or short of statutory right under the  
 26 Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A), (C).” Dkt. 60, p.5. “The action adopted  
 through the 2017 EA provides for the removal of approximately 9,053 excess wild horses within the  
 Antelope and Triple B complexes over a ten year period. To date, BLM already has removed over 12,000  
 wild horses from these complexes.” Dkt. 58, p.21.

1 invalidating phased gather plans pursuant to the Wild Horse Act's immediacy requirement. Dkt.  
 2 66, pp.18-22. While BLM correctly notes that phased gather plans have been found valid by  
 3 other courts, this finding is based upon plans that demonstrate multiple roundups are a practical  
 4 necessity. *See Leigh v. United States DOI*, No. 2:22-cv-01200-MMD-BNW, 2024 U.S. Dist.  
 5 LEXIS 171947, at \*31 (D. Nev. Sep. 23, 2024); *Pendley*, 523 F. Supp. 3d at 57-58. The BLM  
 6 must "begin and complete removal as soon as logistically possible." *W. Rangeland Conservation*  
 7 *Ass'n*, 265 F. Supp. 3d at 1285. The BLM does not have discretion to casually remove excess  
 8 horses at its leisure or prioritize other management techniques over prompt removal, under the  
 9 Wild Horse Act. *See id.* at 1286-87.

10 In this case, BLM has not demonstrated that the November gather is based upon practical  
 11 necessity. Defendants do not even address this issue, instead improperly focusing on current  
 12 population estimates and rangeland conditions more appropriately addressed through  
 13 supplemental or new NEPA allowing standard administrative practices to transpire. Furthermore,  
 14 the November gather seeks to remove horses *not considered* by the 2017 EA at its adoption (and  
 15 apparently also based on current range conditions, which were not considered by the 2017 EA at  
 16 its adoption). The 2017 EA authorized removal of approximately 3,370 horses to achieve low  
 17 AML. Dkt. 060-2 at ¶7; Dkt. 060-1, p.17. The BLM has successfully removed these horses (and  
 18 more) since 2017. *Id.* at ¶¶12-14. (To be clear, BLM had removed over 3,370 horses from the  
 19 Triple B Complex as of August 25, 2022. Dkt. 060-2 at ¶12.) No further action is allowed now  
 20 absent BLM determining that overpopulation exists, rangeland conditions necessitate removal,  
 21 and NEPA review is conducted. *See* 16 U.S.C. § 1333(b)(2); *Pendley*, 523 F. Supp. 3d at 48; *W.*  
 22 *Rangeland Conservation Ass'n*, 265 F. Supp. 3d at 1275; *Haugrud*, 236 F. Supp. 3d at 132;  
 23 *Wyoming*, 839 F.3d at 945.

24 The BLM asks this Court to ignore the scope of the 2017 EA, but no legal basis exists for  
 25 doing so. Nor can the 2017 EA (or the Decision Record) be viewed as allowing removal of *any*  
 26

number of wild horses so long as low AML has not been reached. This is because AML is only one component of a removal decision; the decision also is based on the health of the range as addressed in an environmental review. *See id.* At best (and assuming practical necessity dictated multiple gathers), the evidence before the Court shows that BLM's initial gather operations may not have violated the immediacy requirement, but the November 1, 2024, gather definitely violates the immediacy requirement, necessitating a new removal determination with additional NEPA review.

**D. Plaintiffs Will Be Irreparably Harmed Absent the Requested Relief**

Plaintiffs have demonstrated that the November 1, 2024, will result in irreparable harm. As noted in Plaintiffs' original motion, reducing a species' population through government action has often been recognized by courts to cause irreparable harm justifying injunctive relief. Dkt. 60, p.13 (citing *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 219-22 (D.D.C. 2003) [enjoining a state plan to kill 525 mute swans from a state population of 3,600]; *Fund for Animals v. Clark*, 27 F. Supp. 2d 8, 14 (D.D.C. 1998) [enjoining a bison hunt]; *Fund for Animals v. Espy*, 814 F. Supp. 142, 151 (D.D.C. 1993) [same]). The removal of over 2,000 additional horses also will result in aesthetic injury to the Plaintiffs. *Id.*, p.13-15; *see also Nev. Ass'n of Cty. v. United States DOI*, No. 3:13-cv-00712-MMD-WGC, 2014 U.S. Dist. LEXIS 46225, at \*14 (D. Nev. Apr. 2, 2014) (recognizing aesthetic interests in addressing injunctive relief); *Ohio Valley Envtl. Coal., Inc. v. Hobet Mining, LLC*, 702 F. Supp. 2d 644, 653 (S.D. W. Va. 2010) (recognizing aesthetic enjoyment as a valid basis for establishing harm even when injunctive relief does not alleviate all of a plaintiff's injury); *Fund for Animals v. Norton*, 281 F. Supp. 2d 209, 220 (D.D.C. 2003) (recognizing aesthetic harm as the basis of irreparable harm even when such harm is merely contemplated).

The BLM asserts that the November gather is being undertaken largely to protect horses within the Triple B Complex from suffering; therefore, Plaintiffs' irreparable harm is without

merit. The history of removals in the Triple B Complex weighs against this statement being viewed as entirely true, however. Second Leigh Decl. at ¶¶10-16. The BLM's main goal is to remove horses that might compromise other multiple uses; BLM is less focused on herd health and overall rangeland conditions. *Id.* In fact, more horses are likely to die because of the November gather than are evidenced by the photographs submitted by BLM in its opposition. *Id.* at ¶20.

The BLM also asserts that Plaintiffs' delay in seeking injunctive relief weighs against a finding of irreparable harm. This is incorrect. As addressed in Laura Leigh's second declaration, Plaintiffs had no reason to seek injunctive relief until October of 2024. Second Leigh Decl. at ¶¶32-34. Plaintiffs are aware of no case finding a month or less delay is sufficient to negate irreparable harm. *See, e.g., Cloud Found. v. United States BLM*, 802 F. Supp. 2d 1192, 1207 (D. Nev. 2011) (delay of 45 days is not dispositive on the issue of irreparable harm); *Kadant, Inc. v. Seeley Machine, Inc.*, 244 F. Supp. 2d 19, 34 (N.D.N.Y. 2003) (delay of four months does not negate a finding of irreparable harm); *Marcy Playground, Inc. v. Capitol Records, Inc.*, 6 F. Supp.2d 277, 281-82 (S.D.N.Y. 1998) (delay of fifteen months negates presumption of irreparable harm); *Tough Traveler, Ltd. v. Outbound Prods.*, 60 F.3d 964, 968 (2d Cir. 1995) (delay of nine months negates presumption of irreparable harm); *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir. 1985) (delay of nine months after receiving notice in the press negates presumption of irreparable harm).

Finally, BLM asserts that Plaintiffs will suffer no irreparable harm because some horses will still be available for viewing in the Triple B Complex or at off-range corrals. First, BLM will relocate captured animals to the Broken Arrow holding facility at Indian Lakes, which is closed to the public. Moreover, in support of this argument, Defendants cite *In Def. of Animals v. U.S. Dep't of Interior*, 737 F. Supp. 2d 1125 (E.D. Cal. 2010). In that case, BLM reported in an EA that the Twin Peaks HMA had 2,303 horses and 282 burros. *See In Def. of Animals*, 737 F.

1 Supp. 2d at 1130. Within months of adopting the gather plan, BLM scheduled a gather for the  
2 removal 1,855 horses and 210 wild burros. *See id.* Plaintiffs argued that the removal would  
3 decrease their opportunities to view and appreciate the animals. *See id.* at 1138. This injury was  
4 “premised on the fact that some horses died recently” in another recent gather. *Id.* The Court  
5 found that this injury was not sufficient because some horses would remain on the range, which  
6 the plaintiffs could view. *See id.* The *In Def. of Animals* case is not dispositive, as its facts differ  
7 greatly from the at-issue case. Here, BLM seeks to remove thousands of horses seven years after  
8 adopting a phased gather plan—a plan that never contemplated more than 3,370 horses being  
9 removed. If allowed to proceed, BLM will have removed almost 7,000 wild horses from the  
10 Triple B Complex. Dkt. 60-2 at ¶¶12-14. This despite the fact that BLM has never analyzed the  
11 environmental impacts of such a widescale removal action; BLM has failed to demonstrate that  
12 removal will not decimate the population of horses in each of the HMAs and the WHT contained  
13 within the Triple B Complex. Second Leigh Decl. at ¶13.

14 Plaintiffs acknowledge that removals in the Triple B Complex will need to occur in the  
15 future, but such removal must comport with the requirements of the Wild Horse Act and NEPA.  
16 Second Leigh Decl. at ¶24. The BLM is free to take its evidence of current population and  
17 rangeland health to further removals in the future, once NEPA review has occurred. This  
18 evidence, which includes data from 2022, 2023, and 2024, has been available to BLM for a  
19 sufficient period to allow BLM the ability to conduct NEPA review. Indeed, to the extent that  
20 BLM’s population estimates are based upon assumed growth of 20-25% per year, BLM could  
21 have addressed the need for removal of more than 3,370 horses over a ten-year period. The  
22 agency chose not to do so, and as a result, the scope of the EA is limited. Not only did BLM not  
23 contemplate the removal of 7,000 wild horses, but the public was never afforded an opportunity  
24 to challenge this number through the 2017 EA.

25 BLM may not legally remove horses not authorized by the 2017 EA nor made the subject  
26



1 of public comment through NEPA.

## 2 **E. The Balance of Harms and Public Interest**

3 The BLM asserts that the November gather, which is not an emergency gather, is  
 4 necessary to protect horses and the rangeland. Dkt. 66, pp.28-29. Again, even if this were true,  
 5 BLM still must first determine that 1) an overpopulation of animals exists and 2) action is  
 6 necessary to remove excess animals. *See* 16 U.S.C. § 1333(b)(2). Removal cannot be approved  
 7 until an environmental review occurs pursuant to NEPA. *See Pendley*, 523 F. Supp. 3d at 48  
 8 (D.D.C. 2021); *W. Rangeland Conservation Ass'n*, 265 F. Supp. 3d at 1275; *Haugrud*, 236 F.  
 9 Supp. 3d at 132.

10 Witnessing BLM remove more wild horses from the Triple B Complex than BLM has  
 11 officially determined to be necessary is not only tragic for Plaintiffs but for everyone who  
 12 cherishes these iconic and symbolic creatures. The public interest is in favor of 1) ensuring that  
 13 herds are not decimated to below HMA AMLs and 2) that BLM make transparent removal  
 14 determinations. The public interest is in favor of managing these wild horses in a manner that  
 15 ensures BLM abides by the law. *See Minney v. United States OPM*, 130 F. Supp. 3d 225, 236  
 16 (D.D.C. 2015) (“The public interest is, of course, best served when government agencies act  
 17 lawfully”); *Cent. United Life, Inc. v. Burwell*, 128 F. Supp. 3d 321, 330 (D.D.C. 2015) (“Forcing  
 18 federal agencies to comply with the law is undoubtedly in the public interest”); *Washington v.*  
 19 *Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994) (the public has an interest “in having governmental  
 20 agencies abide by the federal laws that govern their existence and operations”).

## 21 **III. Conclusion**

22 THEREFORE, Plaintiffs respectfully request that the Court enjoin BLM from conducting  
 23 gathers under the phased gather plan adopted in 2017 EA until the Court makes a merits  
 24 determination on Plaintiffs’ claims.



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Respectfully Submitted,

2 /s/ Jennifer Rae Lovko

3 Jessica L. Blome

(Cal. Bar No. 314898, pro hac vice)

4 Jennifer Rae Lovko

(Cal. Bar No. 208855, pro hac vice)

5 GREENFIRE LAW, PC

P.O. Box 8055

6 Berkeley, CA 94707

(510) 900-9502

7 jblome@greenfirelaw.com

rlovko@greenfirelaw.com

8 /s/ Brent M. Resh

9 Brent M. Resh

(Nevada Bar No. 14940)

10 BRENT RESH LAW, PLLC

2401 La Solana Way

11 Las Vegas, NV 89102

12 (702) 781-6903

brent@brentreshlaw.com

13 *Attorneys for Plaintiffs*